



JOHN M. URBAN  
Commissioner

THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION  
COMMUNITY ANTENNA TELEVISION COMMISSION  
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February 10, 1993

VIA FEDERAL EXPRESS

Hon. Donna R. Searcy, Secretary  
Office of the Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: Rate Regulation - Docket No. 92-266

Dear Ms. Searcy:

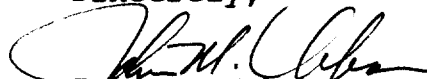
I have enclosed an original and ten (10) copies of the Reply Comments of the Massachusetts Cable Television Commission for filing in connection with the captioned matter.

Please place me on the service list for this docket matter.

In addition, please mark one copy of these comments "filed" and return it to me in the envelope I have enclosed.

Please do not hesitate to contact me if you should have any questions in connection with this matter. In the meantime, I appreciate your assistance.

Sincerely,

  
John M. Urban  
Commissioner

Enclosures

cc: The National Cable Television Association, Inc.  
New England Cable Television Association, Inc.

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
 )  
Implementation of the Cable )  
Television Consumer Protection )  
and Competition Act of 1992 )  
 )  
Rate Regulation )

MM docket No. 92-266

**REPLY COMMENTS OF THE MASSACHUSETTS COMMUNITY  
ANTENNA TELEVISION COMMISSION**

The Massachusetts Community Antenna Television Commission (the "Massachusetts Commission") hereby submits its reply comments on the Notice of Proposed Rulemaking, released December 24, 1992 (the "Notice"), on the implementation of the rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385 (1992) (the "1992 Act").

I. Preemption of Local Regulations

The Massachusetts Commission would like to clarify its position in connection with the question of whether or not state or local regulation regarding the rate regulation process would be preempted by the rules promulgated by the FCC.<sup>1</sup> Comments on the Notice submitted to the FCC by New England Cable Television Association, Inc. ("NECTA") suggest that the Massachusetts Commission would not regulate rates because regulations

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<sup>1</sup> We see this question as distinct from the jurisdictional question as to which governmental entity has the authority to regulate rates for the provision of basic service.

previously promulgated by the Massachusetts Commission deregulate rates. See Comments of NECTA, dated January 27, 1993, pp. 3-5.

The 1992 Act requires that the entity which seeks to regulate rates must file a written certification with the FCC that it "will adopt and administer regulations with respect to the rates subject to regulation under this section that are consistent with the regulations prescribed by the [FCC] . . . ." Pub. L. No. 102-385, §3(a)(3)(A) (1992) (emphasis added). The 1992 Act requires (1) that the rate regulating entity adopt regulations to administer the rate regulation process and (2) that these regulations be consistent with the FCC's regulations. Pub. L. No. 102-385, §3(a)(3)(A) (1992). Therefore, any entity authorized to regulate rates in the Commonwealth of Massachusetts would be required to enact new regulations or modify existing regulations consistent with the 1992 Act and the regulations promulgated by the FCC.

We believe, however, that the rate regulating authority could explore opportunities to deregulate rates where such deregulation could be accomplished consistent with the 1992 Act and the resulting FCC regulations. For example, in our comments to the FCC on the Notice, we suggest that the problem of overpriced remote control devices could be addressed through increased competition. Comments of the Massachusetts Commission, dated January 26, 1993, pp. 11-13 [hereinafter Massachusetts Comments]. We suggest rules which we believe would open the market for remote control devices to manufacturers, distributors

and dealers.

We believe that by eliminating barriers to entry into this market, commercially available remote control devices would ultimately provide effective competition for the provision of this customer premises equipment thereby eradicating the need for rate regulation in this area. If the FCC elects not to address the issue of competition for the provision of customer premises equipment at this time, we believe the rate regulating authority in the Commonwealth, consistent with the FCC's regulations, could explore possibilities for deregulation of the rates for remote control devices and any other equipment for which a commercial market and effective competition exist.

## II. Pass Through Expenses Under a Benchmark Formula

In its comments to the FCC, the National Cable Television Association, Inc. ("NCTA") states that where a benchmark methodology is used "systems should be allowed to pass through any increases in the costs of their programming, in order not to stifle the continuing development of new program services and the continuing improvement in the quality of existing programming." Comments of NCTA, dated January 27, 1993, p. 30 [hereinafter NCTA Comments].

Neither government regulators nor subscribers want to see a regulatory scheme that damages the development of new or improved programming. However, we are concerned that if price increases are passed through to subscribers, the cable industry will not have the economic motivation to negotiate for optimum pricing,

nor will the programmers have incentives to improve their product. In cases in which a cable operator has a financial interest in a programming service, there may also be incentives for allowing pass throughs which would be contrary to the public interest.<sup>2</sup> In the event that a benchmark creates an unreasonable constriction of programming, the benchmark itself should be reviewed.

As stated in our initial comments, we fully support the cable operators' need to be allowed to separate, for purposes of rate regulation, locally imposed expenses that are identified in Section 14 of the 1992 Act (franchise fees, PEG expenses, etc.) Massachusetts Comments, pp. 24-29.<sup>3</sup> However, we do not find justification for extending a pass through allowance for programming rate increases.

### III. Equipment Rate Regulation

NCTA states that "[i]n establishing [equipment] charges, what ultimately matters is that the overall price for all equipment, additional outlets and installation not included in

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<sup>2</sup> This situation represents a classic example of a regulated company that sells a product or service to a second, financially related, unregulated company creating incentives for cross-subsidizations that distort pricing and unfairly injure competitors.

<sup>3</sup> We note that NCTA includes the phrase "all other governmentally imposed assessments" in its comments relating to franchise fee pass throughs. NCTA Comments, p. 43. Congress made no general reference to "all other governmentally imposed assessments." As stated in our initial comments, we are concerned that operators will generate "effective rate increases" by loading this pass through category with unrelated costs (e.g. copyright payments) resulting in an unregulated rate increase catch bin. Massachusetts Comments, p. 25.

the basic service charge not exceed the total costs for such equipment plus a reasonable profit." NCTA Comments, pp. 45-46. We disagree with this interpretation of the 1992 Act. As stated in our initial comments, we see an opportunity to increase competition in the customer premises equipment market. Massachusetts Comments, pp. 11-13. Bundled pricing would impede the likelihood of this competition, especially if competition is opened on an incremental basis.<sup>4</sup>

In a related comment, NCTA states that "there are public benefits to allowing rates for certain equipment to subsidize other equipment and installation charges." NCTA Comments, p. 53. We acknowledge that the reduction of the revenue stream from remote control devices could have the effect of increasing basic tier rates. However, rates for remote control devices and some cable operators' repeated attempts to block subscribers from utilizing their own remote control devices has been an area of continual consumer frustration. Increased choice and competition would, in our opinion, offset any justified rate increase that results from a more accurate pricing scheme.

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<sup>4</sup> In addition to deregulating the rates for remote control devices, the cost of customer premises wiring could be deregulated once a structure for assuring the continuation of system integrity and signal leakage control is established. Deregulation of the converter box would be more difficult to accomplish. (NCTA states on page 46 of its comments that this "may never be a reasonable option for consumers".) As difficult as it may be to open a competitive market for converter boxes, we believe that removing current restrictions on customer premises equipment minimizes the regulatory burden, opens the market to competitors and provides the consumer with more choice.

#### IV. Leased Access

In our initial comments to the FCC we address certain questions regarding leased access. Massachusetts Comments, pp. 40-42. It is our recommendation that the FCC develop a benchmark or maximum rate for leased access. Massachusetts Comments, p. 41. In our review of NCTA's comments, we note that NCTA recommends the use of an "implicit" leased access rate. NCTA Comments, pp. 87-93. NCTA states "the cable operator should in no circumstances be required to provide additional channels, on a leased access basis, at a rate that is lower than the highest implicit leased access charge 'paid' by any programmer on its system." NCTA Comments, p. 92 (emphasis deleted). We believe that linking leased access rates to this type of "implicit" rate may be an adequate guarantee of a reasonable rate that would also reduce the regulatory burden of conducting a leased rate benchmark. However, we note that in its comments, NCTA uses the example of a premium service to explain how an "implicit rate" would be developed. NCTA Comments, p. 92. It is our position that if the leased access provider were offering a service to all subscribers, a comparison should be made to the implicit rate for programmers that provide a service to all subscribers, not a comparison to a premium service provider.<sup>5</sup> If on the other hand, the leased access provider was offering a premium service,

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<sup>5</sup> It is our understanding that when premium services such as SportsChannel or Bravo are moved to an intermediate tier of service, the rate paid by the cable operator is significantly reduced.

it would seem to be reasonable to make a comparison to the implicit rate for premium services.

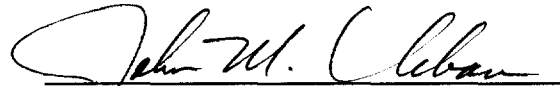
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In closing, we note that various parties involved in this proceeding appear to be in significant agreement concerning the FCC's overall approach to rate regulation. However, up to this point in time, parties have addressed only the general methodology used and not the factors that will determine cable rates. In many ways this is similar to the early discussions that take place between an architect and a prospective home owner. During initial discussions, it is relatively easy for all parties to be in conceptual agreement as to what they want in a house. The true trials and tests begin to occur when the blueprints are drawn. The significant disagreement occurs when the house is built, and corrective action at that point is costly. In extending this analogy, we wish to communicate that it is our hope that the FCC will open the process to further comment when the rate regulation blueprints are drawn; further comment also may be desirable when the procedures and methodologies are actually "built." While this may create the need to phase-in regulations, we believe that timely opportunities for further input would be beneficial to all parties.

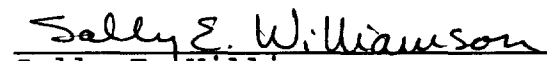
We appreciate the opportunity to submit reply comments on these matters of great importance to the cable industry and to

cable subscribers and look forward to working to implement the regulations adopted by the FCC.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John M. Urban", written over a horizontal line.

John M. Urban  
Commissioner

A handwritten signature in cursive script, appearing to read "Sally E. Williamson", written over a horizontal line.

Sally E. Williamson  
General Counsel

February 10, 1993